

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

- - - - -
THE VIDEOTAPED DEPOSITION OF
MILES TOLBERT, produced as a witness on behalf of
the Defendants in the above styled and numbered
cause, taken on the 13th day of April, 2009, in the
City of Oklahoma City, County of Oklahoma, State of
Oklahoma, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

Draft Copy

TULSA FREELANCE REPORTERS
918-587-2878

A P P E A R A N C E S

FOR THE PLAINTIFFS: Mr. Louis Bullock
Attorney at Law
110 West 7th Street
Suite 770
Tulsa, OK 74119

FOR TYSON FOODS: Mr. Robert George
Attorney at Law
2210 West Oaklawn Drive
Springdale, AR 72762

FOR CARGILL: Mr. John Tucker
Mr. Colin Tucker
Attorneys at Law
100 West 5th Street
Suite 400
Tulsa, OK 74103

FOR SIMMONS FOODS: Mr. Bruce Freeman
Attorney at Law
One Williams Center
Suite 4000
Tulsa, OK 74172

FOR PETERSON FARMS: Ms. Nicole Longwell
Attorney at Law
320 South Boston
Suite 700
Tulsa, OK 74103

FOR GEORGE'S: Mr. James Graves
Attorney at Law
221 North College
Fayetteville, AR 72701
(Via phone)

Draft Copy

TULSA FREELANCE REPORTERS
918-587-2878

1 (Whereupon, the deposition began at
2 9:14 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Miles Tolbert. Today is April
5 13th, 2009. The time is 9:15 a.m. Would counsel 09:14AM
6 please identifies themselves for the Record?

7 MR. BULLOCK: Louis Bullock for the State
8 of Oklahoma.

9 MR. GEORGE: Robert George for the Tyson
10 defendants. 09:15AM

11 MR. TUCKER: John Tucker for the Tyson --
12 the Cargill defendants.

13 VIDEOGRAPHER: And on the phone?

14 MR. GRAVES: James Graves for George's and
15 George's Farms. 09:15AM

16 VIDEOGRAPHER: Thank you. The witness may
17 be sworn in.

18 MILES TOLBERT
19 having first been duly sworn to testify the truth,
20 the whole truth and nothing but the truth, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. GEORGE:

24 Q Mr. Tolbert, would you state your full name
25 for the Record, please? 09:15AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q Okay. Have you ever personally observed
2 litter being land applied to a pasture?

3 A No.

4 Q Do you have any personal knowledge of poultry
5 litter being dumped into any river, stream or lake 02:18PM
6 in the Illinois River watershed by any one of the
7 poultry companies named as a defendant in this
8 lawsuit?

9 A And by dumped, do you mean directly introduced
10 out of the back of a truck into a stream? 02:18PM

11 Q Yes, sir.

12 A No, I have no personal knowledge.

13 Q Do you have any personal knowledge of poultry
14 litter being dumped into any river, stream or lake
15 in the Illinois River watershed by any poultry 02:18PM
16 grower under contract with one of the companies
17 named as a defendant in this lawsuit?

18 MR. BULLOCK: We're using personal
19 knowledge the same way that you defined it earlier?

20 MR. GEORGE: Well, we can start with that. 02:18PM

21 MR. BULLOCK: I just want to be sure that
22 we understand.

23 A No, I don't based on what we've discussed so
24 far.

25 Q Okay. Do you have any personal knowledge of 02:18PM

1 any instance in which one of the poultry companies
2 named as a defendant in this lawsuit has improperly
3 stored poultry litter uncovered for an extended
4 period of time in the Illinois River watershed?

5 **A** No. 02:19PM

6 **Q** Do you have any personal knowledge of any
7 instance in which a poultry grower under contract
8 with one of the poultry companies named as a
9 defendant in this lawsuit has improperly stored
10 poultry litter uncovered for any extended period of 02:19PM
11 time in the Illinois River watershed?

12 **A** No.

13 **Q** Do you have any personal knowledge of any
14 instance in which one of the poultry companies named
15 as a defendant in this lawsuit violated the terms of 02:19PM
16 a State-Issued or approved animal waste management
17 plan or nutrient management plan for any
18 company-owned or managed farm in the watershed?

19 **A** No personal knowledge, no.

20 **Q** Okay. Do you have any personal knowledge of 02:20PM
21 any instance in which a poultry grower under
22 contract with one of the poultry companies named as
23 a defendant in this lawsuit has violated the terms
24 of the State-issued or approved animal waste
25 management plan or nutrient management plan relating 02:20PM

1 to the use of poultry litter in the watershed?

2 **A** No.

3 **Q** Do you have any personal knowledge of any
4 instance in which one of the poultry companies named
5 as a defendant in this lawsuit has violated the laws
6 or regulations in Arkansas or Oklahoma with respect
7 to the handling, storage or application of poultry
8 litter in the watershed?

02:20PM

9 **A** Why don't you ask that again.

10 **Q** Sure.

11 MR. GEORGE: Actually could you read it
12 back?

13 (Whereupon, the court reporter read
14 back the previous question.)

15 **A** No personal knowledge, no.

02:21PM

16 **Q** Do you have any personal knowledge of any
17 instance in which a contract grower who has
18 contracted with one of the poultry companies named
19 as a defendant in this lawsuit has violated the laws
20 or regulations in Arkansas or Oklahoma with respect
21 to the handling, storage or application of poultry
22 litter in the watershed?

02:21PM

23 **A** No.

24 **Q** Do you still have the seconded amend
25 complaint? If you could find it. Can you turn to

02:21PM

1 Page 30, and if you could look over for a moment at
2 Pages 30 through the top of Page 33, Counts 7
3 through 9 of the complaint. Just familiarize
4 yourself generally with the subject matter.

5 **A** I'm sorry. I'm going through 131, Paragraph 02:22PM
6 131; is that what --

7 **Q** No. Actually go through Paragraph 138.

8 **A** Okay.

9 **Q** You'll see generally, Mr. Tolbert, that Counts
10 7, 8 and 9 assert claims for violations of 02:24PM
11 Oklahoma's poultry litter regulatory statutes,
12 including the Confined Animal Feeding Operations Act
13 and Registered Poultry Feeding Operations Act.

14 **A** Okay.

15 **Q** Can you provide me with the specific basis for 02:24PM
16 any of the allegations contained in Counts 7 through
17 9 of the complaint?

18 **A** I don't have the statutory citations in front
19 of me. If -- I don't think I understand the
20 question. 02:25PM

21 **Q** Okay. My question was whether or not you, Mr.
22 Tolbert, are the person who can provide me with the
23 specific factual circumstances and events that
24 underlie the claims that are asserted generally in
25 Counts 7, 8 and 9 of the second amended complaint? 02:25PM

1 **A** I could describe them to you. I don't
2 know if-- when you say the person, I'm not quite
3 certain what you are referring to.

4 **Q** Let me approach it this way. Can you identify
5 for me, Mr. Tolbert, a single poultry grower who has 02:25PM
6 violated the Oklahoma Confined Animal Feeding
7 Operations Act?

8 **A** Can I name the grower?

9 **Q** Sure.

10 **A** No. 02:25PM

11 **Q** Okay. Could you identify the parcel of
12 property on which a violation occurred?

13 **A** I could not, no.

14 **Q** Okay, and if I asked those same questions with
15 respect to the other Oklahoma ag statutory claims, 02:25PM
16 would your answers be the same?

17 **A** I think they would be the same.

18 **Q** Mr. Tolbert, at some point in time did you
19 make a report to Randy Young or someone with the
20 Arkansas Natural Resource Commission alleging 02:26PM
21 violations of the Arkansas poultry litter regulatory
22 statutes?

23 **A** Yes.

24 **Q** Tell me about that.

25 **A** I don't remember the particulars of it. I 02:26PM